



# 2017 Update: Enforcement Policy

**April 4, 2017 – Item 9**

**Presented by**

**Cris Carrigan, David Boyers, Melissa Hall &  
Dr. Matthew Buffleben**

**State Water Resources Control Board  
Office of Enforcement**

# Stakeholder Outreach Since 2/7

- All Stakeholders Requesting Meeting
  - California Council for Environmental and Economic Balance (CCEEB) – 2/10
  - Water and Wastewater Utilities – 2/15
    - California Association of Sanitation Agencies (CASA)
    - Central Valley Clean Water Association (CVCWA)
    - Southern California Alliance of POTWs (SCAP)
    - Association of California Water Agencies (ACWA)
  - Agriculture – 2/15
    - Western Growers Association
    - California Farm Bureau Federation
    - Westside San Joaquin Watershed Coalition
    - Kern River Watershed Coalition Authority
    - Dairy Cares
  - California Coastkeeper Alliance – 2/22
  - Environmental Justice Coalition for Water – 2/22

# Stakeholder Outreach

- ACL methodology webinars
  - Two sessions
    - Two hypothetical cases
    - Both high volume examples
  - 150+ attendees
  - Question and answer session

# Proposed Changes Since 2/2017

- Consistent Enforcement (Section I.C.)
- Human Right to Water (Sections I.G. & II.B.1.)
- Clarification to Step 2 of Case Prioritization Model (Section II. B.)
- Potential for Harm (Section VI.A. Step 1 Factor 2.)
- High Volume Discharges (Section IV.A. Step 2.)
- Degree of Culpability (IV.A. Adjustment Factor)
- History of Violations (IV.A. Adjustment Factor)

# Consistent Enforcement (I.C. page 3)

The Water Boards achieve consistency in enforcement by applying the penalty calculator in Section VI. ~~This policy~~ and not by comparing enforcement matters. While comparing similar enforcement cases is not prohibited and may be relevant, this Policy does not require a Water Board to compare a proposed penalty to other actions that it or another Water Board has taken, or make findings about why the assessed or proposed amounts differ.

# Human Right to Water (I.G & II.B.1.)

The Water Boards shall also prioritize and pursue enforcement in furtherance of State Water Board Resolution No. 2016-0010, adopting the Human Right to Water as a core value, and will make information about violations of the Human Right to Water available through CIWQS. A violation the Water Boards' public databases. In furtherance of the Human Right to Water for purposes, the Water Boards shall prioritize the enforcement of this Policy is one where the violation violations that involve a discharge or threatened discharge, which results, in or threatens to result, in, the denial contamination of one's human right to drinking water resources. (Page 4.)

Case Prioritization – Non-Exclusive Factors Include: “... violations that involve a discharge or threatened discharge, that results in or threatens to result in, the contamination of drinking water resources.” (Page 6.)

# Treatment of Class A Violations in Case Prioritization Model (II.B.)

The second step in enforcement prioritization involves establishing case priorities for discretionary enforcement actions against specific individual entities, and determining the appropriate remedial tool. Discharges that fall into one of the “Class A” categories above will be further analyzed for the extent of impact to beneficial uses when Regional Water Boards prioritize cases and determine whether and how to proceed with enforcement. (Page 6.)

# Analyzing Potential Harm In Context

Potential harm should be evaluated in the context of the specific characteristics of the waste discharged and the specific beneficial uses of the impacted waters. (**Page 12.**)



# High Volume Discharges (Page 15.)

In most cases, the Water Boards shall apply the above per gallon factor to the maximum per gallon amounts allowed under the California Water Code for the violations involved. However, recognizing that the volume of certain discharges can be very high, the Water Boards ~~have the discretion~~ may elect to select use a value between \$2.00 per gallon and \$10.00 per gallon with the above factor to determine the per gallon amount for discharges that are between 100,000 gallons and 2,000,000 gallons for each discharge event, whether it occurs on one or more days. For discharges in excess of 2,000,000 gallons, or for discharges of recycled water that has been treated for reuse, the Water Boards may elect to use a maximum of \$1.00 per gallon with the above factor to determine the per gallon amount.

# HIGH VOLUME DISCHARGES (PAGE 15.)

These provisions are advisory and intended to provide a basis for achieving consistency and substantial justice in setting appropriate civil liabilities. Where ~~reducing the \$10~~electing to use a maximum of \$1.00 per gallon ~~statutory maximum~~or \$2.00 per gallon would result in an inappropriately small civil liability based on the severity of impacts to beneficial uses, the discharger's degree of culpability, and/or other considerations, a higher amount, up to the statutory maximum, should be used. Examples of ~~dischargers~~discharges that could be subject to a reduction include, but are not limited to, wet weather sewage spills, partially-treated ~~sewer spills~~sewage spills, discharges from irrigated agricultural operations, potable water discharges, and construction or municipal stormwater discharges.

# DEGREE OF CULPABILITY (PAGE 18.)

Adjustment should result in a multiplier between ~~1.0~~**0.75 and 1.5**, with a higher multiplier for intentional misconduct and gross negligence, and a lower multiplier for more simple negligence. A neutral assessment of 1.0 should be used when a discharger is determined to have acted as a reasonable and prudent person would have. A multiplier of less than 1.0 should only be used when a discharger demonstrates that it has exceeded the standard of care expected of a reasonably prudent person to prevent the violation.

# History of Violations (Page 18.)

Any prior history of violations: Where the discharger has no prior history of ~~any~~ violations, this factor should be neutral, or 1.0. Where the discharger has ~~any history of~~ prior violations, within the last five years, the Water Boards should use a ~~minimum~~ multiplier of 1.1 ~~should be used~~. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1.



## Questions & Comments?

**Cris Carrigan** [@waterboards.ca.gov](mailto:Cris.Carrigan@waterboards.ca.gov)

**David.Boyers** [@waterboards.ca.gov](mailto:David.Boyers@waterboards.ca.gov)

**Matthew.Buffleben** [@waterboards.ca.gov](mailto:Matthew.Buffleben@waterboards.ca.gov)

**Melissa.Hall** [@waterboards.ca.gov](mailto:Melissa.Hall@waterboards.ca.gov)